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Robert Wilfer

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EXAMINER

MUKKAMALA, SANDEEP

ART UNIT

PAPER NUMBER

4152

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,256	Applicant(s) WILFER ET AL.	
	Examiner SANDEEP MUKKAMALA	Art Unit 4152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/10/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 20 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "Use of" claims do not belong to one of the recognized statutory categories of invention and is thus non-statutory.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 15, 17-18, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (U.S. 4442868).

With regards to claim 1, Smith teaches that "a smoke and water –vapor-permeable food casing (technical field, claim 17) made of a mixture based on polyamide or copolyamide (claim 12), which is impregnated with liquid smoke on the food-facing side (col. 7 line 10, claim 9)." (Nylon is generically known as polyamide).

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With regards to claim 4, Smith discloses that the food casing materials are nylon, polyester... (col. 6 line 60). (Nylon is generically known as polyamide).

With regards to claim 15, Smith discloses the casing is multilayered (claim 23).

With regards to claim 17, Smith discloses the liquid smoke is an acidic liquid smoke (col. 4 lines 39-42).

With regards to claim 18, Smith discloses it is in shirred form (col. 8 line 51, claim 22).

With regards to claim 20, Smith discloses the use of food casing for smoked sausage product (col. 11 line 21) or smoked cheese (col. 11 line 12).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2- 3, 6, 10, 13, 14, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. 4442868) in view of Okudaira (US 6,294,263).

Smith et al. teaches the casing as discussed above. Smith does not appear to explicitly disclose the food casing is tubular, preferably seamless, a mixture which comprises at least one aliphatic polyamide and at least thermoplastic other polymer wherein the mixture additionally contains at least one organic or inorganic filler wherein the filler based on the total weight is not greater than 40%. Smith also does not appear to explicitly disclose the aliphatic polyamide or (co)polyamide wherein the component based on the total weight of the mixture is 40 - 90 % by weight or that the food casing wherein the total weight of the thermoplastic mixture, is 10 to 60% by weight.

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Regarding claim 2 & 16, however, Okudaira et al. disclose a seamless (col. 7, lines 55-60), tubular (column 7, lines 55-60), biaxially oriented (col. 7, lines 16-30) heat-set polyamide-based food casing (col. 7, lines 7-15).

Okudaira and Smith are analogous art because they are from the same field of endeavor, sausage casing. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Smith and Okudaira before him or her, to modify the teachings of Smith (as discussed above) to include the teachings of Okudaira (as discussed above) because the casing would be permeable and have a flexural fatigue resistance (col. 8 lines 1-15), which relates to the strength of an unstretched or stretched casing.

Therefore, it would have been obvious to combine Okudaira with Smith to obtain the invention as specified in the instant claim(s).

Regarding claim 3, 6, 10 & 13 wherein the food casing is for sausage (col. 7, lines 46-60), wherein the content of aliphatic (co)polyamide is from 55-85%, or 60-80%, by weight based on the total weight of the mixture (col. 6, lines 40-50), made of a thermoplastic mixture which comprises at least one aliphatic polyamide (col. 2, lines 23-26, col. 1, lines 66-67 and col. 4, lines 23-29), wherein the mixture comprises at least one inorganic and/or organic filler (col. 6, lines 51-59). Okudaira also discloses the food casing wherein the filler based on the total weight is not greater than 40% by weight (col. 6 lines 58-59).

Okudaira and Smith are analogous art because they are from the same field of endeavor, sausage casing. At the time of the invention, it would have been

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obvious to one of ordinary skill in the art, having the teachings of Smith and Okudaira before him or her, to modify the teachings of Smith (as discussed above) to include the teachings of Okudaira (as discussed above) because the casing would have improved properties such as packaging material & lubricity (col. 6 lines 51-54). Therefore, it would have been obvious to combine Okudaira with Smith to obtain the invention as specified in the instant claim(s).

Regarding claim 9, Okudaira teaches wherein the thermoplastic mixture comprises a mixture of (co)polyamide and polyether block amide, the content of (co)polyamide being from 10 to 99% by weight (col. 6, lines 22-27), and the content of polyether block amide being from 1 to 90% by weight (col 6, lines 28-39 and col. 5, lines 61- 63), in each case based on the total weight of said polymers in the thermoplastic mixture.

Okudaira and Smith are analogous art because they are from the same field of endeavor, sausage casing. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Smith and Okudaira before him or her, to modify the teachings of Smith (as discussed above) to include the teachings of Okudaira (as discussed above) because the casing would have improved properties such as packaging material & lubricity (col. 6 lines 51-54). Therefore, it would have been obvious to combine Okudaira with Smith to obtain the invention as specified in the instant claim(s).

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Regarding claim 7 & 14, Okudaira teaches wherein the film may be either stretched or unstretched and the amounts of additives varied to vary the strength and permeability properties for processed meats and the polymer would be hydrophilic (col. 7, lines 16-59 and col. 6, lines 51-59). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to vary the physical conditioning and chemical composition of the casing in order to provide the above water vapor permeability properties. Therefore, it would have been obvious to combine Okudaira with Smith to obtain the invention as specified in the instant claim(s).

5. Claims 10-12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. 4442868) in view of Okudaira (US 6,294,263) in further view of Hutschenreuter et al. (US 4,528,225).

Smith et al. & Okudaria teach the food casing as discussed above. Smith and Okudaria fail to expressly disclose wherein the thermoplastic mixture contains at least one organic or inorganic filler wherein the inorganic filler comprises... mineral fibers and/or glass microspheres and wherein the organic filler comprises... polysaccharides.

Regarding claim 10 & 14, Hutschenreuter (225) teaches a food casing made of a thermoplastic mixture which comprises at least one aliphatic polyamide (col. 1, lines 7-12 and col 6, lines 25-35 and FIG-2, #2), wherein the mixture comprises at least one inorganic and/or organic filler (col. 7, ll. 42-49), however, fails to

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expressly disclose a casing having water vapor permeability, of at least 30 g/m²-d.

However, Hutschenreuter (225) teaches wherein the amounts and types of additives are varied to vary the strength and permeability properties for processed sausage (col 7, lines 42-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to vary the chemical composition of the casing in order to provide the above water vapor permeability properties in effort to make possible the drying process during ripening.

Regarding claim 11, Hutschenreuter (225) teaches wherein the inorganic filler is glass microbeads (col. 7, lines 42-49).

Regarding claim 12, Hutschenreuter (225) teaches wherein the organic filler is a Carbohydrate, and/or a derivative thereof, a branched or crosslinked polysaccharide and/or a derivative thereof (col. 8, lines 25-32).

Okudaira, Smith and Hutschenreuter are analogous art because they are from the same field of endeavor, sausage casing.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Smith, Okudaira and Hutschenreuter before him or her, to modify the teachings of Smith (as discussed above) and Okudaira (as discussed above) to include the teachings of Hutschenreuter (as discussed above) because it provides the casing permeable to gas and smoke which does not impair the flavor and appearance of the foodstuff (col. 2 line 34-36).

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Therefore, it would have been obvious to combine Hutschenreuter with Okudaira and Smith to obtain the invention as specified in the instant claim(s).

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. 4442868) in view of Okudaira (US 6,294,263) in further view of Anderson et al. (U.S. 6,231,970).

Smith et al. & Okudaira teach the food casing as discussed above. Smith and Okudaira fail to expressly disclose wherein the thermoplastic polymer is a water-soluble which swells under the action of water or water vapor.

However, Andersen ('970) teaches wherein the polymer swells under the action of water (col. 19, lines 14-33).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute Smith & Okudaira casing for a casing that is swellable, as taught by Andersen ('970) in order to provide a casing that results in gelatinization or deconstructurization (col. 19 lines 14-33), which will act as a thermoplastic material.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. 4442868) in view of Okudaira (US 6,294,263) in further view of Delius et al. (2002/0065364).

Regarding claim 5, Smith et al. & Okudaira teach the food casing as discussed above. Smith and Okudaira fail to expressly disclose wherein the polyamide or copolyamide forms therein a coherent phase. However, Delius discloses a

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polymer blend with a coherent phase made from an aliphatic copolyamide (abstract & 0015).

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Smith, Okudaira and Delius before him or her, to modify the teachings of Smith (as discussed above) and Okudaira (as discussed above) to include the teachings of Delius (as discussed above) because it provides the casing with flexibility for application involving moist food (0011) wherein sausage emulsion can be added. Therefore, it would have been obvious to combine Hutschenreuter with Okudaira and Smith to obtain the invention as specified in the instant claim(s).

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. 4442868) in view of Basic Sausage making process

(<http://web.archive.org/web/20030209224419/http://3men.com/makesaus.htm>).

Smith et al. teach the food casing as discussed above. Smith fails to expressly disclose the method for producing a smoked food having the steps providing ready-to-stuff tubular casing, stuffing the casing with food, preferably sausage emulsion, closing the casing and storing the stuffed casing. However, basic sausage making process discloses a method for producing a sausage and steps providing to stuff casing with sausage emulsion, closing the casing and storing the stuffed casing (see link above).

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Smith and Basic Sausage making process before

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him or her, to modify the teachings of Smith (as discussed above) to include the teachings of Basic sausage making process (as discussed above) because it provides a step by step method of making a smoked sausage (see link above). Therefore, it would have been obvious to combine Basic sausage making process with Smith to obtain the invention as specified in the instant claim(s).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANDEEP MUKKAMALA whose telephone number is (571)270-7043. The examiner can normally be reached on Mon - Thurs 8:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571)272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SANDEEP MUKKAMALA/
Examiner, Art Unit 4152

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 4152